

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANCIS A. HUMES,
Plaintiff,

v.

STEVE BERNAL, et al.,
Defendants.

Case No. 21-cv-08490 EJD (PR)

**ORDER OF PARTIAL DISMISSAL
AND OF SERVICE; DIRECTING
DEFENDANTS TO FILE
DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION; INSTRUCTIONS TO
CLERK**

Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 based on an incident that occurred while he was housed at the Monterey County Jail as an pretrial detainee. Dkt. No. 1. The Court dismissed the amended complaint with leave to amend to correct various deficiencies. Dkt. No. 11. Plaintiff filed a second amended complaint (“SAC”). Dkt. No. 19.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any

cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

B. Plaintiff's Claims

Plaintiff names the following as Defendants: Sheriff Deputy Torres and Monterey County Sheriff's Department Jail ("Jail"). Dkt. No. 19 at 2.

Plaintiff claims that this action concerns the Fourteenth Amendment rights of a pretrial detainee who suffered life-long injuries due to the deliberate indifference of Defendant Deputy Torres. Id. at 4. Plaintiff alleges that on August 2, 2019, he was transported in his wheelchair from the Monterey County Jail and suffered injuries because Deputy Torres failed to properly secure his wheelchair to the moving vehicle. Id. at 5. Plaintiff claims for the first time in this action that Defendant Torres acted with deliberate indifference by refusing to stop and properly secure Plaintiff's wheelchair even when it was obvious to everyone on board that Plaintiff was at risk of injury.¹ Id. at 6. Plaintiff claims Defendant Torres "disregarded a policy and S.O.P. in place as a protection, prevention and assistance to unexpected situations." Id. at 8. Plaintiff claims Defendant Torres' actions resulted in serious injuries. Id. at 9. Plaintiff also asserts a state tort claim for gross negligence against Defendant Torres. Id. at 10. Plaintiff's allegations are sufficient to state a Fourteenth Amendment claim against Defendant Torres. See Castro v. Cnty. of Los Angeles, 833 F.3d 1060, 1067-68 (9th Cir. 2016) (en banc). The Court will also exercise supplemental jurisdiction over the state claim for gross negligence against

¹ Plaintiff's amended complaint alleged that Defendant Torres' actions were merely negligent, which was not sufficient to state a § 1983 claim. Dkt. No. 11 at 6.

1 Defendant Torres. See 28 U.S.C. § 1367(a).

2 Plaintiff also claims that the Monterey County Sheriff Department violated the
3 “provisions of the ADA and Rehabilitation [A]ct” by failing to provide appropriate
4 transportation vehicle, equipment, and operator. Dkt. No. 19 at 4. Plaintiff claims that he
5 was pushed to a “celly port” and secured in restraints, leg irons, belly chain [and]
6 shackles” along with six other passengers. Id. Plaintiff claims that the three deputies who
7 were present were not “properly trained or familiar with the equipment or vans’ simplest
8 operational requirements.” Id. Plaintiff asserts that the “extemporaneous transportation of
9 A.D.A. mobility impaired detainees in specialized vehicles by deputies without the
10 specialized training required to competently operate the van and equipment necessary to
11 load, secure and transport mobility impaired A.D.A. [inmates] cannot be considered
12 ‘appropriate’ by any standard.” Id. Plaintiff asserts that the “reckless decision to provide
13 van to the transportation fleet before properly training deputies is callous disregard to
14 health and safety.” Id.

15 Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.
16 (“ADA”), provides that “no qualified individual with a disability shall, by reason of such
17 disability, be excluded from participation in or be denied the benefits of the services,
18 programs, or activities of a public entity, or be subjected to discrimination by any such
19 entity.” 42 U.S.C. § 12132. Here, Plaintiff was not denied the benefit of the services,
20 programs, or activities, nor was he subjected to discrimination due to his disability.
21 Rather, the Jail provided Plaintiff with a wheelchair and a suitable vehicle for
22 transportation. Accordingly, he fails to state an ADA claim. Plaintiff has already been
23 afforded an opportunity to amend this claim. Dkt. No. 11 at 3-4. He does not merit
24 another opportunity. Wagh v. Metris Direct, Inc., 363 F.3d 821, 830 (9th Cir. 2003)
25 (district court’s discretion to deny leave to amend particularly broad where plaintiff has
26 previously filed an amended complaint); Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir.
27 1992).

Plaintiff asserts that the deputies who were involved in his transportation were not properly trained in the equipment of the van to properly secure his wheelchair. Local governments are “persons” subject to liability under 42 U.S.C. § 1983 where official policy or custom causes a constitutional tort, *see Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 690 (1978). To impose municipal liability under § 1983 for a violation of constitutional rights resulting from governmental inaction or omission, a plaintiff must show: “(1) that he possessed a constitutional right of which he or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff’s constitutional rights; and (4) that the policy is the moving force behind the constitutional violation.” *Oviatt By and Through Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (quoting *City of Canton v. Harris*, 489 U.S. 378, 389 (1989) (internal quotation marks omitted); *see Plumeau v. School Dist. #40 County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997). In “limited circumstances,” a municipal policy may be based upon the local government’s decision not to train certain employees about their legal duty to avoid violating citizens’ rights. *Connick v. Thompson*, 563 U.S. 51 at 61 (2011). The local government’s liability under § 1983 is at “its most tenuous,” however, when the claim is based on a failure to train. *Id.* Plaintiff was already advised of the standard to state a *Monell* claim. Dkt. No. 11 at 3-4. Here, Plaintiff’s allegations are again insufficient to state a *Monell* claim against the Jail because he fails to show all the factors under *Pearce*. As with the amended complaint, there is no allegation in the SAC that the failure to train was based on a policy which was the moving force behind the constitutional violation. Furthermore, Plaintiff claims that Defendant Torres “disregarded a policy and S.O.P. in place.” Dkt. No. 8. This indicates that the Jail did in fact have a policy in place which Defendant Torres failed to follow. As such, that allegation contradicts Plaintiff’s claim that the Jail did not properly train its deputies or had a policy which was the moving force behind the violation. Plaintiff was already granted two opportunities to amend to correct the various deficiencies in the pleadings. Accordingly, he shall not be afforded another opportunity. *See Wagh*, 363 F.3d at 830; *Ferdik*, 963 F.2d at 1261.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. The following claims against the Monterey County Sheriff Department Jail are **DISMISSED with prejudice** for failure to state a claim: (1) an ADA claim; and (2) a Monell claim.

2. The following claims against **Defendant Deputy Torres** are cognizable: (1) deliberate indifference under the Fourteenth Amendment; and (2) state claim for gross negligence. The Clerk shall terminate all other Defendants from this action.

3. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the second amended complaint and all attachments thereto, Dkt. No. 19, and a copy of this order upon **Defendant Deputy Torres** at the Monterey County Jail (1410 Natividad Rd., Salinas, CA 93906). The Clerk shall also mail a copy of this Order to Plaintiff.

4. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure requires them to cooperate in saving unnecessary costs of service of the summons and the second amended complaint. Pursuant to Rule 4, if Defendants, after being notified of this action and asked by the Court, on behalf of Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of such service unless good cause shown for their failure to sign and return the waiver form. If service is waived, this action will proceed as if Defendants had been served on the date that the waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve and file an answer before **sixty (60) days** from the day on which the request for waiver was sent. (This allows a longer time to respond than would be required if formal service of summons is necessary.) Defendants are asked to read the statement set forth at the foot of the waiver form that more completely describes the duties of the parties with regard to waiver of service of the summons. If service is waived after the date provided in the Notice but before Defendants have been personally served, the Answer shall be due sixty (60) days from the date on which the request for waiver was sent or twenty (20) days from the date

1 the waiver form is filed, whichever is later.

2 5. No later than **ninety-one (91) days** from the date this order is filed,
3 Defendants shall file a motion for summary judgment or other dispositive motion with
4 respect to the claims in the second amended complaint found to be cognizable above.

5 a. Any motion for summary judgment shall be supported by adequate
6 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
7 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor
8 qualified immunity found, if material facts are in dispute. If any Defendant is of the
9 opinion that this case cannot be resolved by summary judgment, he shall so inform the
10 Court prior to the date the summary judgment motion is due.

11 b. **In the event Defendants file a motion for summary judgment, the**
12 **Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate**
13 **warnings under Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See**
14 **Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012).**

15 6. Plaintiff's opposition to the dispositive motion shall be filed with the Court
16 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'
17 motion is filed.

18 Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and
19 Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment
20 must come forward with evidence showing triable issues of material fact on every essential
21 element of his claim). Plaintiff is cautioned that failure to file an opposition to
22 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to
23 the granting of the motion, and granting of judgment against Plaintiff without a trial. See
24 Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18
25 F.3d 651, 653 (9th Cir. 1994).

26 7. Defendants shall file a reply brief no later than **fourteen (14) days** after
27 Plaintiff's opposition is filed.

28 8. The motion shall be deemed submitted as of the date the reply brief is due.

No hearing will be held on the motion unless the Court so orders at a later date.

9. All communications by the Plaintiff with the Court must be served on Defendants, or Defendants' counsel once counsel has been designated, by mailing a true copy of the document to Defendants or Defendants' counsel.

10. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the parties may conduct discovery.

11. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

12. Extensions of time must be filed no later than the deadline sought to be extended and must be accompanied by a showing of good cause.

IT IS SO ORDERED.

Dated: April 27, 2023



EDWARD J. DAVILA
United States District Judge